

AUG 1 1979

MICHAEL RODAK, JR., CLERK

No. 78-1639

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

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JOHN E. MORRISON, JR., ET AL.,

Petitioners

JOHN C. STETSON, SECRETARY OF THE  
AIR FORCE

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

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REPLY OF PETITIONERS TO  
MEMORANDUM FOR THE RESPONDENT  
IN OPPOSITION

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In the final paragraph of the Memorandum for the Respondent, the Government states that the Senate Report (S. Rep. No. 411, 85th Cong. 1st Sess. (1957) "explains without ambiguity that this statute was not intended to affect persons who, like petitioners, had an independent obligation to serve on active duty". Upon reexamination of the Senate Report, we are still unable to find any "explanation" to this effect

or even any mention of those who had some independent obligation to serve on active duty. Apart from the plain language of the statute, petitioners have contended from the outset that the failure of the legislative history to create some exception for persons who had an independent obligation to serve reveals unmistakably that the Congress had no such intention.

The Government also suggests that 50 USC App. (1970 ed.) 454(1)(1) had expired "before petitioners received their commissions". This is the first time during this litigation that such a suggestion has been made by the Government. As the record shows, petitioners "received their commissions" in 1969 or 1970, long before 1973 when the Government claims the statute expired. Thereafter they were allowed educational delay for several years. Moreover, petitioner Morrison was offered appointment as a medical officer on June 14, 1973, which was to take effect on acceptance. The acceptance occurred on July 1, 1973, according to Air Force records that were exhibits in the case.

The question of statutory interpretation is of great importance because (a) the restriction on ordering medical or dental specialists to active duty was not intended by the Congress to expire on July 1, 1973, and (b) even if it were intended to expire on that date, there are many present and former Air Force medical and dental officers who would be entitled to extra pay if they were ordered to active duty for four years when their service obligation was

only two years.

It is respectfully submitted that the petition for certiorari should be granted.

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#### CERTIFICATE OF SERVICE

I have this day mailed two copies of this reply to the Solicitor General at his office address in Washington.

This 1st day of August, 1979.

*James B. Craven III*  
James B. Craven III